

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

RICHARD D. MURRAY, Sr.,

Plaintiff,

v.

Civil Action No. 3:05cv6

MORGAN COUNTY CIRCUIT COURT, and
BERKELEY COUNTY CIRCUIT COURT

Defendants.

**AMENDED MEMORANDUM, OPINION, and REPORT AND RECOMMENDATION
THAT CASE BE DISMISSED WITHOUT PREJUDICE**

On January 27, 2005, the *pro se* Plaintiff, Richard D. Murray, an inmate at Eastern Regional Jail in Martinsburg, WV, filed this 42 U.S.C. § 1983 action with this Court. In addition to his Complaint, Plaintiff filed an Application to Proceed Without Payment of Fees. Also, Plaintiff submitted a certified copy of his trust fund account statement, and ledger sheets for the preceding five months. However, the plaintiff did not submit a consent to collection of fees from trust account. On March 3, 2005 this Court ordered Plaintiff to file a completed consent to collection of fees form by March 23, 2005. As of May 12, 2005 the form has yet to be filed.

III. RECOMMENDATION

In consideration of the foregoing, it is recommended that Plaintiff's Complaint be **DISMISSED** without prejudice.

Any party may file within ten (10) days of the date of this Recommendation, with the Clerk of the Court written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to

the District Court Judge of Record. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The April 5, 2005 Report and Recommendation was returned. The United States Marshall advises Plaintiff is now housed as Huttonsville Correction Center P.O. Box 1, Huttonsville WV 26273, Tel. (304) 335-2291. The Clerk of the Court is directed to mail a copy of this Report and Recommendation to all parties appearing herein.

DATED: May 12, 2005

/s/ James E. Seibert
JAMES E SEIBERT
UNITED STATES MAGISTRATE JUDGE